

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5468 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SHAILESH R PATEL

PROP. S.K.JEWELLERS

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 5468 of 2004
MR PARESH M DAVE for Petitioner No. 1-9
MR ASIM J PANDYA for Respondents
-

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 05/05/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr. Asim Pandya, learned Additional Standing Counsel for the Central Government, waives service of notice of rule.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the judgment and order dated 5.6.2003 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, Mumbai dismissing the petitioners' Appeals Nos.648 to 655 and 676 of 2001 and confirming the Order-in-Original No.15 of 2001 dated 28.2.2001/9.3.2001 passed by the Commissioner of Customs (Preventive), Ahmedabad. By the above Order-in-Original, the Commissioner of Customs (Preventive), Ahmedabad has ordered to confiscate gold weighing 58.320 Kg. under the provisions of Section 111 (d) of the Customs Act, 1962. The order also imposed penalty of Rs.50 lakhs on Vijay Dasrathbhai Patel and Shailesh Ratilal Patel, Rs.50,000/= on Devang Amrutlal Patel and Rs.5,000/- each on six other petitioners.

3. The main challenge in this petition is that after hearing of the appeals was concluded before the Tribunal on 3.4.2002 the petitioners had filed written submissions on 9.4.2002 and thereafter also the petitioners had filed Miscellaneous Applications on 16.4.2003 alongwith a copy of the order of the CIT (Appeals) requesting the Tribunal to take the said order of the CIT (Appeals) into consideration. However, the Tribunal passed the impugned order on 30.5.2003/5.6.2003 (Annexure A to the petition) dismissing the appeals of the petitioners but without referring to the written submissions which were filed by the petitioners as far back as on 9.4.2002 or without referring to the Miscellaneous applications dated 16.4.2003 with which the petitioners had also filed a copy of the order of the CIT (Appeals) passed on 22.9.2002. It is contended that the facts giving rise to the proceedings before the Commissioner of Customs (Preventive) had also given rise to the proceedings under the Income-tax Act and the Assessing Officer had passed orders against the present petitioners who carried the matter in appeal before the Commissioner of Income-tax (Appeals). The CIT (Appeals) allowed the appeal on 22.9.2002 after the appeals were heard by the Tribunal on 3.4.2002. It is therefore submitted that since the Tribunal decided the appeals after a period of 14 months from the date of conclusion of the arguments and neither

the written submissions nor the Misc. applications were considered, the order of the Tribunal suffers from non-application of mind and even otherwise such gross delay in deciding the appeals after conclusion of arguments vitiates the order.

Another contention raised on behalf of the petitioners is that the impugned order of the Tribunal is not a speaking order as the Tribunal has not given any reason for not accepting the petitioners' contentions and has merely expressed its agreement with the order of the Commissioner of Customs (Preventive). It is submitted that except the last paragraph of the Tribunal's order, all the previous paragraphs merely set out the reasoning and findings contained in the order of the Commissioner of Customs (Preventive) and that it is not sufficient for an appellate Tribunal to express its agreement in the last paragraph of its judgment without enumerating the submissions of the appellants and without dealing with the same. It is submitted that the Tribunal is required to set out submissions of the appellants and thereafter to deal with them and to give reasons in support of its findings but none of these things are done by the Tribunal and straightaway the appeals are dismissed by giving just one paragraph of concurrence.

The learned counsel for the petitioners has placed strong reliance on the decisions in *Unique Coordinators v. Union of India*, 2004 (165) ELT 396 (Bom.) and *Devang Rasiklal Vora v. Union of India* 2003 (158) ELT 30 (Bom.), which are annexed as Annexure C to the petition.

4. On the other hand, Mr. Asim Pandya, learned Additional Standing Counsel for the Central Government, has submitted that since the Tribunal agreed with the findings of the Commissioner of Customs, it was not necessary to give detailed reasons. It is also submitted that after Miscellaneous Applications were filed alongwith the order of the CIT (Appeals), it was for the petitioners to move the Tribunal to pass appropriate orders on the Miscellaneous applications and thereafter only the question of considering the order of the CIT (Appeals) could arise. It is also submitted that in any view of the matter, the order of CIT (Appeals) had dealt with an altogether different controversy about the legality or otherwise of the transaction under the Income tax Act whereas the present proceedings are concerned with the legality or otherwise of the transaction under the Customs Act.

5. As regards the delay between hearing of arguments and delivery of the judgment, in *RC Sharma vs. Union of India* (1976) 3 SCC 574, the Apex Court after noticing that the Civil Procedure Code (prior to amendments made in 1999-2002) did not provide the time limit for completing a judgment, made the following observations:-

"Nevertheless, we think that an unreasonable delay between hearing of arguments and delivery of a judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the result of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgments. Justice, as we have often observed, must not only be done but must manifestly appear to be done."

In the two decisions relied upon by the learned counsel for the petitioners viz. *Devang Rasiklal Vora vs. Union of India*, 2003 (158) ELT 30 and *Unique Coordinators vs. Union of India*, 2004 (165) ELT 396, the Bombay High Court set aside the judgments of the CEGAT which were rendered after two years (in the first case) and one year (in the second case) after the date of hearing, only on the ground of delay in delivery of the judgment.

In the case of *Devang R Vora* (supra), the Bombay High Court after referring to the observations of the Hon'ble Supreme Court in *RC Sharma's* case also made the following observations:-

9. Recently, the Apex Court in the case of *Anil Rai vs. State of Bihar*, (2001) 7 SCC 318 had also an occasion to consider the serious issue of delayed delivery of judgment by some of the High Courts and had occasion to lay down certain guidelines regarding pronouncement of judgments by the High Courts. The similar guidelines can conveniently be laid down for the CEGAT so as to prevent delayed delivery of the judgments which at the end of the day results in denial of justice as happened in the instant case.

10. We, therefore, direct the President of

the CEGAT to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai vs. State of Bihar (supra) and to issue appropriate administrative directions to all the benches of the CEGAT in the behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the CEGAT and followed strictly by all the benches of the CEGAT."

The aforesaid observations were made on 18.8.2003 and reported in 2003 (158) ELT.

6. Having heard the learned counsel for the parties, we are of the view that the gross delay of 14 months on the part of the Tribunal in deciding the appeals considered along with the fact that the Tribunal's judgment does not even contain a reference to the petitioners' written submissions (which were submitted within one week from the date of conclusion of the arguments), is sufficient for setting aside the impugned order.

7. Accordingly, we allow this petition. The judgment and order dated 30.5.2003/5.6.2003 at Annexure A to the petition is set aside and the matter is remanded to the Tribunal for hearing and deciding the appeals in accordance with law. It will be open to the petitioners to request the Tribunal to take up their Miscellaneous Applications dated 16.4.2003 for hearing and thereafter the Tribunal shall hear and decide the appeals in accordance with law.

It is clarified that we have not gone into the merits of the controversy which is the subject matter of the appeals before the Tribunal nor have we gone into the merits of the Miscellaneous Applications filed by the petitioners on 16.4.2003 for producing a copy of the order of the CIT (Appeals). Hence we may not be treated to have expressed any opinion on the relevance or otherwise of the said order of the CIT (Appeals) in the proceedings before the Tribunal under the Customs Act.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)